EXHIBIT G

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

S&L VITAMINS, INC.,

Plaintiff/Counterclaim Defendant,

- against -

AUSTRALIAN GOLD, INC.,

Defendant/Counterclaim Plaintiff.

AUSTRALIAN GOLD, INC.,

Third-Party Plaintiff,

- against -

LARRY SAGARIN AND JOHN DOES 1-10,

Third-Party Defendants.

DEPOSITION OF MICHAEL NIERMAN

New York, New York

Tuesday, March 28, 2006

Reported by:
MICHELE ROSSI, RPR

March 28, 2006
1:20 p.m.

DEPOSITION of MICHAEL NIERMAN, held at the offices of MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO, P.C., 666 Third Avenue, New York, New York 10017 before Michele Rossi, a Registered Professional Reporter and Notary Public within and for the State of New York.

COLEMAN LAW FIRM
Attorneys for Plaintiff
1350 Broadway, Suite 1212
New York, New York 10018
BY: DAVID STEIN, ESQ.

ICE MILLER, LLP
Attorneys for Defendant,
Australian Gold, Inc.
One American Square, Suite 3100
Indianapolis, Indiana 46282-0200
BY: SCOTT D. MATTHEWS, ESQ.

IT IS HEREBY STIPULATED AND AGREED by and among counsel for the respective parties hereto that the sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except to the form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

M I C H A E L   N I E R M A N
stating his residence as 71 Maple Road, Kings Park, New York 10754, having been duly sworn by the Notary Public (Michele Rossi, RPR), was examined and testified as follows:

EXAMINATION BY MR. MATTHEWS:

Q My name is Scott Matthews. We met off the record. Have you ever been deposed before?
A No.
Q Have you ever given a deposition?
A No.
Q This is what we call a deposition. And let me explain to you what will happen, so you can at least understand the framework in which we're operating today.
I'm an attorney for Australian Gold, Inc. Australian Gold, Inc. is a defendant, a third-party plaintiff in a lawsuit filed by your employer, S&L Vitamins, Inc. You've been identified as an employee of S&L Vitamins.
And my purpose today is to ask you questions about facts that you may know related to the issues in the lawsuit. So I'm going to be

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asking you a series of questions, and you need to give me truthful answers. Okay?
A Sure.
Q Just as a ground rule, when you respond to my question, either yes, no or provide an answer out loud. Shakes of the head or nods or slugs of the shoulders are hard to transcribe, so if you answer audibly, it makes for a better record because she's taking down every word that we say. Fair enough?
A Yes.
Q Are you under any medication today that would prevent you today from testifying truthfully?
A No.
Q If there's any question that I ask you that you don't understand, please let me know, okay?
A Yes.
Q And I will be happy to rephrase it. Otherwise, I'll just assume that you understood my question. Fair enough?
A Yes.
Q Would you state your home address,

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please?
A 71 Maple Road, Kings Park, New York 10754.
Q How old are you?
A I am 26 years old.
Q Are did you go to high school?
A Northport High School.
Q Is that located in Long Island?
A Yes, Northport, Long Island.
Q What year did you graduate?
A 1998.
Q Did you take any classes after high school?
A I went to college.
Q Where did you go to college?
A C.W. Post.
Q Where is C.W. Post located?
A Brookville, New York.
Q Did you graduate from C.W. Post?
A Yes.
Q What year did you graduate?
A January 2004.
Q What is your degree in?
A Criminal justice.

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Q That's a 4-year degree?
A Yes.
Q Did you have a minor?
A No.
Q Are you currently enrolled in school?
A No.
Q Do you have any plans to attend any graduate school in the future?
A No.
Q Are you married?
A No.
Q Do you have any children?
A No.
Q Where are you currently employed?
A S&L Vitamins.
Q Many how hours a week do you work at S&L Vitamins?
A About 32.
Q How many days a week do you work there?
A Five.
Q What days are those?
A Monday, Tuesday, Thursday, Friday, Saturday.
Q What are your shifts on each day? How

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long are you there at the store?
A I work 11 until about 6.
Q Is that a set schedule or does that vary?
A It varies.
Q Does it vary just because of the need of the owners or what?
A Some days I switch my off day.
Q What about your hours, is it typically 11 to 6 even if you switch your off day?
A Yes. And sometimes I stay until seven.
Q Why would you switch your off day, is there any particular reason?
A Doctor's appointments.
Q Do you have any other employment besides S&L Vitamins, Inc.?
A No.
Q What is your job title at S&L Vitamins, Inc.?
A Store manager.
Q What is the location of the store that you manage?
A Body Source, 308 East Montauk Highway, Lindenhurst, 11757.

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Q How long have you been the store manager?
A 3 years.
Q Do you have any employees that report to you?
A No.
Q Who do you report to?
A Steve Mercadante.
Q Who is Steven Mercadante?
A An owner of Body Source.
Q Do you report to anyone else?
A Larry Sagarin.
Q Who is Larry Sagarin?
A Steven Mercadante's partner.
Q Does your shift at Body Source overlap with the hours that Steve Mercadante or Larry Sagarin are present?
A Rephrase that, please.
Q Sure. The time that you're at the Body Source store, is either Steven Mercadante or Larry Sagarin there?
A Yes.
Q Can you give me an idea of their schedules, how frequently -- let's start with

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Mr. Mercadante first. What dates he's usually present at Body Source?
A Steven is usually there from about 10 a.m. until 7 p.m., Monday through Friday.
Q And on the weekends?
A No.
Q What about Mr. Sagarin, what are his hours?
A Mr. Sagarin is there from about 11 a.m. until 6 p.m. and his hours change frequently.
Q You mean, 11 a.m. to 6 p.m. varies from day-to-day?
A He does not stay with us the whole time.
Q What days is he there at Body Source?
A Monday through Friday.
Q What about the weekends?
A No.
Q Is the store closed on Saturday, Body Source?
A No.
Q What are the hours of operation of Body Source?
A Monday through Friday, 10:30 a.m. to 7 p.m. Saturday, 11 a.m. to 6 p.m. Sunday,

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closed.
Q Where is Mr. Sagarin, you said he's not there all the time between 11 and 6, where does he go, do you know?
A I don't know.
Q Is he at his other store?
A I don't know.
Q So if I walked into the Body Source store on Montauk Highway on a typical Monday afternoon, I would find you, Mr. Sagarin, perhaps, and Mr. Mercadante present?
A Yes.
Q Are you paid a salary?
A Yes.
Q Is that a set amount each week?
A Yes.
Q Do you receive any commission for sales?
A No.
Q Do you receive any income from any revenues generated from the website?
A No.
Q What is your salary?
MR. STEIN: Objection. You can answer. I object.

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A I take home $350 a week.
Q I believe you said you've been there about 3 years at Body Source on Montauk Highway; is that correct?
A No. You asked me how long I was the manager.
Q I'm sorry. How long have you been at Body Source on East Montauk Highway?
A 5 years.
Q What did you do for the first 2 years of your employment at Body Source?
A Stock shelves, ring up customers.
Q Did do you anything else those first 2 years?
A Clean the store.
Q Anything else?
A No.
Q Was there a store manager at that time, those first 2 years of your employment?
A I guess you consider Steven Mercadante, the store manager.
Q How long has the Body Source store on East Montauk been open?
A I don't know.

Q Was it open when you arrived there 5 years ago?
A Yes.
Q How have your duties changed, if at all, since you became the store manager?
A I'm busier.
Q Well, the specific duties that you've listed, have they increased?
A Yes.
Q How so?
A I answer phones. I do a lot of customer service.
Q Anything else?
A Sometimes if it's busy, I help pack orders in the back room.
Q Do you have any responsibility for ordering products?
A No.
Q Do you have any interaction with any vendors or suppliers of Body Source?
A No.
Q You said you do customer service. What does that mean?
A Someone will call up, ask about a

product. I explain the product to them. That's about it.
Q Have you ever given a customer a refund for a product?
A No.
Q Are you responsible for handling customer complaints?
A I answer e-mails.
Q Does that mean e-mails regarding customer complaints?
A Sometimes a customer might complain.
Q So that's a yes to my question?
A Yes.
MR. STEIN: Well, do you know what his question was?
MR. MATTHEWS: We can read it back.
(The requested portion was read back.)
A E-mails can mean a lot of things.
Q Do you respond to e-mails involving customers who are complaining to the Body Source?
A A few times we had complaints on certain protein powders and I took care of that.
Q How did you handle those complaints?
A I refunded them their money.

Q Did they return the product to you?
A Yes.
Q What was the nature of their complaint?
A The powder did not mix well.
Q So in your employment at Body Source, your testimony is that it's been a few occasions on which customers have complained by e-mail about a protein product that the Body Source sold?
A Yes, very few.
Q Have there been any other complaints that you've addressed while at Body Source?
A No.
Q Are you aware of any complaints about tanning locations lodged by a customer at Body Source?
A No.
Q To your knowledge, has any customer of Body Source ever asked for a refund for tanning lotions that they purchased from Body Source?
A I don't know.
Q Who is primarily responsible for addressing customer refunds at Body Source?
A Refunds regarding what?

Q A refund for any reason.
A I don't know.
Q Well, you're the store manager, who would know?
A I could take a guess.
Q Is there a reason you don't know?
A I usually do not handle returns. I usually do sales up front, you know, manage the store, make sure it's clean. I don't really handle problems.
Q So if I come into your store and say, I want to see the store manager, I have a product that I want to return, I want a refund, and you're at the counter, then do you pass it off to a particular person?
A If I did not know what to do with it, I would.
Q And who would you give that to?
A Steven.
Q What about Mr. Sagarin, would he also be someone who would handle customer complaints, or no?
A I don't know.
Q Does Body Source have a policy with

respect to returns?
A I don't know.
Q Who would know?
A Not me.
Q Does Body Source keep track of the amount of returns it receives in a year?
A I don't know.
Q Does Body Source keep track of customer complaints that it receives?
A I don't know.
Q Who would know?
A Possibly Steven.
Q Does the Body Source have a protocol for handling Internet returns?
MR. STEIN: I want to lodge an objection insofar as questions concerning Body Source because the nature of my objection is as to relevance simply because Body Source is not a defendant in this action.
I've given a lot of latitude in asking questions about Body Source, but the objection still stands as to relevance because I don't know that the questions pertain to the lawsuit involving S&L

Vitamins.
Notwithstanding that, I'll allow him to answer the question. I'm not instructing him not to answer.
MR. MATTHEWS: We'll hold that question for a minute. Let's clear something up.
Q Your employer is S&L Vitamins?
A Correct, yes.
Q S&L Vitamins does business as Body Source; is that true?
MR. STEIN: If you know.
A I don't know.
Q Well, you testified earlier in your deposition, I said, where do you work? And you said, Body Source, 308 --
A That's the name on the sign in front of the store. I'm not too familiar with what happens, you know, with corporations and business.
Q But if I enter S&L Vitamins's place of business, I first have to drive to 308 East Montauk Highway, correct? If I wanted to go to S&L Vitamins's place of business, I'd first go to 308 East Montauk, correct?

A Yes.
Q When I arrived at 308 East Montauk, I would see a sign above the entrance to S&L Vitamins' place of business that said, Body Source, correct?
A Yes.
Q With that -- and how do you answer the phone as a store manager of this retail establishment?
A I answer the phone, Body Source.
Q I don't think there's any confusion. I'm going to use them both.
And all the questions I asked you about refunds and returns, do any of your answers change now that we've kind of clarified this Body Source versus S&L Vitamins distinction, if there is one?
A No. My role in more complex parts of the business doesn't exist.
Q Do you know the name of the website on which S&L Vitamins does business?
A Yes.
Q What is the name of the website or websites?

A BODYSOURCEONLINE.COM.
Q Is there another one?
A Not that I know of.
Q Are you familiar with THESUPPLENET.COM website?
A Yes.
Q What is the THESUPPLENET.COM?
A I think that's the name before it switched over to BODYSOURCEONLINE.COM, and that's BODYSOURCEONLINE.COM. But I did not do anything with the other site.
Q Is the BODYSOURCEONLINE.COM website part of S&L Vitamins's business, if you know?
A I don't know.
Q Does S&L Vitamins have a protocol for handling returns for sales made on the Internet?
A I don't know.
Q Do you know if there are, in fact, any returns from products on the Internet?
A No.
Q How are the products sold over the Internet by S&L Vitamins shipped to the consumers?
A UPS.

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Q Does UPS come to the store and pick the products up?
A Every night.
Q Does UPS come more than once a day?
A If they have a delivery.
Q What types of products are delivered to S&L Vitamins by UPS?
A Sports and nutrition.
Q So products ordered from your suppliers?
A Sure.
Q Who is responsible for checking in the orders from UPS?
A For sports nutrition, myself and Steven.
Q How do you know that an order for sports and nutrition versus maybe another type of package, such as another product or customer return or anything of that nature, how do you know what --
A You look at the label and it tells you who it's from.
Q So what process do you go through? You look and see if the label is from a name that you recognized as a sports and nutrition supplier and then if it is, you check it in?

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A Sure.
Q What if the package that you receive is from a name that is unfamiliar to you, who handles that package?
A Steven.
Q Let me just clarify something here. You talked about one of your roles that expanded when you became store manager was customer service issues. I just want to make sure I understand what that does and does not entail.
And I believe you said, customer refunds are generally not done by you. Is that a true statement?
A Yes. I generally do not handle any returns.
Q Have you ever handled a return for any tanning lotion product?
A No, sir.
Q And customer complaint, you handle on occasion, but not regularly; did I understand that right or am I getting that wrong?
A It depends, honestly, who picks up the phone. Usually, I am up front handling the store.

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Q Are most of your complaints over the phone?
A Yes.
Q Are they from customers who purchased something in your retail store or are the telephone complaints mostly from customers who purchased something on the Internet?
A I would think mostly, the store.
Q Do you have an idea of the gross sales for S&L Vitamins for last year?
A No.
Q Do you have any responsibility with respect to the financial records of S&L Vitamins?
A None.
Q Do you do anything else with respect to customer service issues that you have not already explained to me in this deposition?
A Yes.
Q What are those things that involve customer service issues that you have not already explained to me?
A I track packages.
Q Anything else?
A No.

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Q When you say track packages, what do you mean?
A I use the UPS system to tell the customer when their order that was shipped by us will arrive.
Q Do you do that with respect to every order that is placed?
A No.
Q So this is something that you do if a customer calls and e-mails and asks about a status of their order?
A Correct.
Q Does S&L Vitamins have a special software program provided by UPS that it uses to track orders?
A UPS World Ship.
Q Is that a program that's downloaded on S&L Vitamins's computer or is that like an Internet placed program that you go to the Internet and track packages, if you know?
A I don't know.
Q And that's fair. If you don't know the answer to a question, it's perfectly fine just to tell me you don't know. I'm not here to test

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your knowledge, just to see what you know.
Do you know if S&L Vitamins has any software management tools that, for example, can track the amount of shipments that are sent to and from or through UPS, things of that nature.
A I'm not too sure on the full capacity of that program.
Q Who is responsible at S&L Vitamins for monitoring e-mails received from customers through the Internet?
A Steven.
Q Is there a specific e-mail that a customer, an e-mail address that a customer uses if it wants to contact S&L Vitamins about a purchase it made over the Internet?
A I believe we have one e-mail.
Q What is that address?
A INFO@BODYSOURCEONLINE.COM.
Q Do you have a password to access that e-mail account?
A It's saved.
Q A better question, I guess, would be, do you access that e-mail account to look at e-mails?

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A I access that if I have to process an order.
Q Do you access the e-mail account to read e-mails that S&L Vitamins has received from its customers?
A Rephrase that.
Q Sure. Do you get on that e-mail account to look at e-mails that S&L Vitamins has received from its customers?
A Only if a have to process an order.
Q When you say process an order, what do you mean by that?
A I make the shipping label for the order. That's not my job, but if someone is not able to do it at the time, I do it.
Q What else is involved in processing an order?
A You just pack it up and send it out.
Q Do you own any businesses?
A No.
Q Do you have any promise of ownership in S&L Vitamins?
A No.
Q Prior to your employment with S&L

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Vitamins, where were you employed?
A Elco Lock and Door.
Q What were your dates of employment there?
A 1997 on and off until 1999.
Q I believe you said you've been the store manager at S&L Vitamins for the last 3 years, and overall you've been employed at S&L Vitamins 5 years, correct?
A Correct.
Q That takes us back to 2001, when you started employment at S&L Vitamins?
A Okay.
Q Is that right?
A 2001 at Lindenhurst, New York.
Q Were you unemployed from 1999 through 2001?
A No.
Q Where did you work for those years?
A Body Source.
Q Is that a different Body Source than the Body Source --
A Yes, sir.
MR. STEIN: Let him just finish the

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question before you answer, just so the court reporter can take can take it all down.
Q Is that Body Source, Inc. or is that just Body Source? What's the --
A I don't know.
Q Where is the address of that business?
A It was in East Northport. I don't know the address.
Q What were your dates of employment at Body Source in Northport?
MR. STEIN: Approximately.
A Approximately November 1999 until 2001 when the Lindenhurst store opened.
Q What did you do for Elco Lock and Door?
A Install locks.
Q Was that a full-time job?
A No.
Q Was that a part-time position while you were in school?
A It's my father's company.
Q Where is that located?
A 20 Elm Drive, East Northport, 11731.
Q What was your job title at Body Source in Northport?

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A Just a regular employee.
Q What kind of business is the Body Source in -- I'm going to try to be clear because I may use Body Source on Montauk, so I'm going to try to say, Northport.
So if you're confused, David, or Mr. Nierman, let me know, so we have a clear record on that.
Generally, what is the business of the Body Source store in Northport?
A It was a sports nutrition store.
Q Is it still in business?
A No.
Q Who owned that store?
A I don't know.
Q Who did you work for? Let me ask a better question, who did you report to?
A Larry Sagarin.
Q Did Larry Sagarin work at the Body Source Northport store?
A Before I started working there, yes.
Q In November of 1999 through 2001, did Larry Sagarin also work at that store?
A Yes.

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Q Who else worked at that store during the time in which you were an employee?
A I believe just me.
Q What types of products did Body Source Northport sell?
A Protein powders, fat burners, muscle builders.
Q Did it sell tanning lotions?
A No.
Q What were your responsibilities at that store?
A Cashier.
Q Did you have any other responsibilities?
A Keep the store clean.
Q Anything else?
A No.
Q You say at some point in time in 2001, the Body Source store in Northport closed?
A Yes.
Q Did you go directly from that store to the store on Montauk Highway?
A Yes.
Q Do you know why the store in Northport closed?

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A No.
Q Who offered you a job at the Montauk Highway store?
A Steven Mercadante.
Q Did you work with Steven Mercadante at Northport?
A I believe he left to open Lindenhurst and he trained me there, but I don't think that's working with him.
Q Did Larry Sagarin ask you to move from the Northport store to the Montauk store?
A I asked him.
MR. STEIN: In addition to the Steve Mercadante answer that he gave?
MR. MATTHEWS: Yes.
Q You could answer.
A I asked for a job.
Q Did you have discussions with Larry Sagarin about moving from Northport to Montauk?
A I asked him to ask Steven if it was okay.
Q Why did you ask Mr. Mercadante if it was okay?
A I thought it was his store.

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Q Did you ever work at the Body Source store in Miller Place?
A I filled in for Helen Sagarin on three occasions.
Q And Helen Sagarin is Larry's mother?
A Yes.
Q Do you know who owned the Body Source store in Miller Place?
A No.
Q Do you have an understanding it was Larry Sagarin?
A No. I believe it was Helen.
Q With respect to the Northport store, did you have an understanding that Larry Sagarin was the owner of that store?
A It depends on what owner means.
Q Well, what does it mean to you?
A Someone who pays the bills and collects money.
Q Well, did Larry Sagarin pay the bills and collect money at Northport?
A I don't know.
Q Do you know why the Lindenhurst store was opened?

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A I don't know.
Q Did the Body Source store at Miller Place sell tanning lotions, to your knowledge?
A No.
Q Did the Body Source store at Northport have a website?
A No.
Q Do you know if the Body Source store at Miller Place has a website?
A I don't know.
Q When is the last time you worked at the Body Source store in Miller Place?
A 2002.
Q Was that one of the dates in which you filled in for Helen Sagarin?
A Yes. I think it was around December or January, there was snow on the ground.
Q Do you know who Laura Fanning is?
A Yes.
Q How do you know Laura Fanning?
A I know that she is Larry Sagarin's wife.
Q Have you met her before?
A Yes.
Q How many occasions?

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A Once.
Q When was that?
A Steven Mercadante's wedding.
MR. MATTHEWS: Let's take a break.
(A recess was taken.)
Q How do you know Larry Sagarin outside of work?
A I used to be a customer of Body Source, Northport.
Q Was that how you were first introduced to Larry Sagarin?
A Yes.
Q I take it, you were a good customer?
A Yes.
Q Are you a body builder?
A At one point, I was.
Q Did you ever enter any competitions or was it just a hobby --
A I was training for a competition and I fell ill.
Q When did you first meet Larry Sagarin, do you remember what year, approximately?
A 1997.
Q That was at the Northport store where

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you met him?
A Yes.
Q I don't know the geography around here, but I take it that's where you grew up, where you went to high school, so the Body Source Northport store would be your local supplement store; is that right?
A Yes, correct.
Q How did that lead to a job opportunity?
A I asked if he was hiring.
Q And his response?
A If you don't already know, yes.
Q Are you friends with Larry Sagarin outside of work?
A I don't see him outside of work, but I would call him my friend.
Q Did you know Steve Mercadante before your employment with Body Source?
A No.
Q Have you ever been involved in any other lawsuits?
A No.
Q Who at S&L Vitamins is primarily responsible for filling customer orders over the

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Internet?
A Steven.
Q Do you assist Mr. Mercadante in filling customer orders?
A If we're busy, I help pack the orders.
Q Does anyone else help Mr. Mercadante in filling customer orders?
A Not while I'm there.
Q I kind of gather from your testimony that your primary responsibility is out in the retail space of the store; is that right?
A Yes.
Q Describe for me the layout of the Body Source store in Lindenhurst.
A When you first walk in, there is a freezer on the right-hand side and then many shelves and wall units filled with with sports supplements.
Q Is there a sales counter as well?
A Yes. On the left-hand side, the computer, which is the cash register.
Q I take it that's probably where you spend most of your time, behind that computer and cash register, as well as just in the retail

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store?
A I spend 95 percent of my time there.
Q At the cash register?
A Yes.
Q Are you one that's primarily responsible for stocking the shelves in the retail store?
A Yes.
Q Where is the product that you stock the shelves with kept?
A The back room.
Q How big is the back room?
A About the side of this room.
Q Can you estimate --
A No.
Q -- in feet?
A Do I have to?
Q Well, if you can.
A I can't.
Q I mean, I don't know what this room is, maybe 15 feet wide by about maybe 25, 30 feet long. I don't know.
A Then that sounds about right.
MR. MATTHEWS: We could get out a tape measure, David, you stand on one end, I'll

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stand on the other and we'll figure it out.
Q What's in the back room?
A Sports supplements and tanning lotion.
Q Are they kept on shelves?
A Yes.
Q Are the shelves lined up against the wall, are they just every which way?
A On the wall.
Q How many shelves are in the back room?
A About seven.
Q How many shelves contain tanning lotions?
A Seven.
Q Is there any shelves that contain nutritional supplements?
A No. That's a certain corner of the back room.
Q How are they kept? Are they kept on the shelf, on a pallet or what? The nutritional supplements, I'm talking about.
A It's like a stand.
Q The seven shelves where the tanning lotions are kept, are those shelves floor to ceiling?

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A No.
Q How high are the shelves?
A 6-1/2, 7 feet.
Q Are the shelves full with tanning lotion or are they empty?
A It depends on the time of year.
Q Well, generally now, in March -- what did the shelves look like yesterday?
A There was a decent amount of tanning lotion.
Q Can you estimate how much is on the shelves?
A I don't know. I just went to the bathroom and passed them.
Q What else besides shelves of tanning lotions and then the corner with the nutrition supplements is in the back room of S&L Vitamins?
A Two computers located on a long desk.
Q Anything else?
A A calendar.
Q Who uses the computers in the back room?
A Larry Sagarin, Steven Mercadante and myself.
Q What are the computers used for?

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A Processing orders and checking e-mail, personal e-mail.
Q For business purposes of S&L Vitamins, are the two computers primarily used then for processing Internet orders?
A Yes.
Q Do you know why there are two computers versus only one?
A I don't know.
Q Is one dedicated to a certain function and another computer dedicated to another function?
A No.
Q And your use of the computers in the back room would be to process orders?
A Only if I have to, otherwise I use them for personal use.
Q How do the tanning lotions arrive at the Body Source store in Lindenhurst?
A I don't know.
Q Have you ever received an order for tanning lotions?
A Personally?
Q No, not like your place, but have helped

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Larry Sagarin or Steven Mercadante --
A Yes.
Q -- unload an order or receive an order from a supplier?
A I've helped carry boxes containing tanning lotions into the store.
Q Tell me about that.
A Larry opened the trunk of his car, which is in the back, and I took a box that was brown and I brought it inside.
Q How many boxes did Larry have in his car?
A Three.
Q On how many occasions have you helped Mr. Sagarin unload tanning lotions?
A Three times.
Q Have you ever received an order of tanning lotions in another manner other than from the trunk of Mr. Sagarin's car?
A No.
Q Have you ever gone with Mr. Sagarin or Mr. Mercadante or by yourself to another location to pick up tanning lotions for S&L Vitamins?
A No.

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Q Have you had any discussions with Mr. Sagarin or Mr. Mercadante about where they obtain the tanning lotions?
A No. I don't care.
Q Why don't you care?
A Because it's not my job to care.
Q What discussions have you had with Mr. Sagarin or Mr. Mercadante about this lawsuit?
A None.
Q They told you there is a lawsuit involving their company and Australian Gold?
A They mentioned it briefly.
Q When did they mention it to you?
A Around September of '05.
Q What did they say to you?
A We are getting sued.
Q What did you say in response to that?
A I'm sorry.
Q Did you ask them if that affected whether or not you had a job?
A No. What I do is temporary.
Q What do you mean by that?
A It means that I will work there until I get into the career of choice.

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Q What is that?
A Something in criminal justice, possibly a police officer, maybe a probation officer.
Q So something in your field of study is your ultimate career objective?
A Yes.
Q Did they explain to you why they were in litigation or in a lawsuit with tanning lotion companies?
A I think they said they don't like it being sold online.
Q Did they say anything else that you recall?
A No.
Q Are you aware of a manufacturer of tanning lotions called California Tan?
A Sure.
Q Are you aware of a lawsuit between S&L Vitamins and California Tan; if you know?
A Can I say a little bit?
Q Sure.
MR. STEIN: Whatever the truth is, that's what you can say.
A A little bit.

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Q Did you give any testimony in that case?
A No.
Q Did you have any discussions with Mr. Sagarin or Mr. Mercadante about California Tan and S&L Vitamins reaching a resolution on the issues of that case?
MR. STEIN: I'm going to object again just as to relevance. He can answer the question, but I don't know that it's reasonably calculated to lead to the discovery of admissible evidence.
I'm sorry for interrupting your train of thought. Would you mind reading the question back?
A Can you repeat it.
Q Let me just rephrase it. Do you have any understanding of how the California Tan lawsuit was resolved with S&L Vitamins?
A Yes.
Q What's your understanding of that?
A I believe they had to pay a certain sum of money.
Q Anything else?
A No, not that I know of.

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Q Did you play any role in deciding how to resolve that lawsuit?
A No.
Q In this lawsuit, do you have any role with respect to how this case moves forward?
A No.
Q Back to the questions I was asking you about receiving the orders. You testified you carried boxes in the car. Then what's done with the products once the boxes are inside S&L Vitamins's place of business?
A You check to make sure the correct amount of product is there. And that's all I have done.
Q How do you check to see if the correct amount of product is there?
A I count the bottles. And I tell Mr. Sagarin how many bottles of a certain product are on the table. And he says either okay or no, check again.
Q Do you compare that with an invoice or something written down on a sheet of paper?
A No.
Q Is that Mr. Sagarin who does that?

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A Yes.
Q Does Mr. Sagarin have a piece of paper or something in his hand that he's using to check the orders against the actual count that you performed?
A A piece of paper, I'm not sure if it's an invoice. I don't look.
Q He's never shown it to you?
A No.
Q And then what happens next after the inventory is counted and checked in? It gets placed on the shelves?
A Yes.
Q Shifting gears just a little bit, same process. I'm a customer. I place an order over the Internet for purchase of tanning lotions. Let's say I want an Australian Gold product, say I want Crystal, and let's say, I also want a bottle of Swedish Beauty Amaretto.
So I type it in and I go through online, get to the shopping cart and I pay for it and I hit the submit button, how does that order come to S&L Vitamins?
A Through a Yahoo hosted website.

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Q Do you receive an e-mail that says --
MR. STEIN: I'm going to just for purposes of clarification, I'm going to say that the record should reflect that that sentence that he just said should end with a question mark because that's how I believe the way that it was phrased.
Q Okay. Do you know how the order is processed?
A I have an idea.
Q Tell me what your idea is.
A You click order when it has a little red, I guess, asterisk there, then you can view the order. You can click sale and that would, I believe, charge the person's credit card.
And then you can hit another, I'd like to say, link that says print invoice. And then you create a UPS label.
Q And this is some kind of a software that's provided through the Yahoo business platform, if you will?
A I believe it is all Yahoo.
Q Do you get an e-mail or is it just some kind of a report that you can go to see, oh, I

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have a new order?
A I believe with every order, for example, 666, there would be an e-mail saying order 666. Then you click on e-mail and that would show the order.
Q And so it would identify what products had been ordered and you click on the order and it would tell you what products have been ordered by this customer, correct?
A Yes.
Q And then you have a button that you hit manually that says sale and that charges the credit card?
A Yes.
Q And then there's another button that allows you to print the invoice?
A Yes.
Q Is the invoice placed in the customer's order when it's shipped to them?
A Yes.
Q Does S&L Vitamins keep a copy of its invoice?
A I don't know.
Q And then you print a UPS label?

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A Yes.
Q Let's say, I've ordered my two bottles of lotion. And let's assume on this day you're the one that's responsible for assembling my order. Once you receive my order and see what I want, what would you do?
A I would charge you, print out the invoice, print out the label, box your order and place it underneath a table.
Q And that would be where the orders are waiting for the UPS person to come and pick them up?
A Yes.
Q Do you know how many orders per day are processed by S&L Vitamins?
A I don't know.
Q Does Mr. Mercadante do that full time while he's there at S&L Vitamins?
A Yes.
Q Does he have any other responsibilities at S&L Vitamins other than packing and shipping orders?
A He handles most of the phone calls for the business.

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Q Does he generally spend his time in the back room where the tanning lotions are and those two computers?
A Yes.
Q What about Mr. Sagarin, where does he primarily spend his time when he is at S&L Vitamins?
A In the back and some up front.
Q What does he do up front?
A Checks to see what new products are out.
Q Are tanning lotions displayed in the retail storefront of S&L Vitamins?
A Yes.
Q How many tanning lotions are on display in your retail store?
A There's just one shelf, a wall unit.
Q Does the shelf display every product that's offered for sale over the Internet?
A I don't know.
Q Who is responsible for stocking that shelf of tanning lotions in the retail portion of S&L Vitamins's store?
A Steven and Larry.
Q Does the S&L Vitamins store on Montauk

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Highway have a tanning bed in it?
A No.
Q S&L Vitamins is not a tanning salon?
A No.
Q Have you ever been trained on the use of tanning lotions?
A No.
Q Do you know what a tingle product is?
A Yes.
Q Have you ever used a tingle product?
A Yes.
Q Did you use that in conjunction with tanning at a tanning bed?
A Yes.
Q How did you get your hands on a tingle product?
A I purchased it.
Q At the retail tanning salon?
A No.
Q Where did you purchase it from?
A I believe it was BESTPRICETANNING.COM.
Q How long ago was that?
A About a year ago.
Q Does BESTPRICETANNING.COM have better

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prices than BODYSOURCEONLINE.COM?
A I don't know.
Q Why did you purchase it from a competitor on the Internet?
A They had the product I wanted.
Q What product did you purchase, do you remember?
A Supre Cocoa, Cocoa Beach Pod.
Q And Supre is another manufacturer of tanning lotion or is a manufacturer of tanning lotions, right?
A Right.
Q Did you apply the tingle all over your body?
A No.
Q Did you put any on your face?
A No.
Q Why not?
A I usually do not put lotion on my face.
Q Did you turn red with the tingle?
A No.
Q You didn't?
A No. Maybe a little, not red.
Q Did it burn?

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A You feel a burn sensation.
Q Did it tingle?
A Yes.
Q Have you ever seen anybody who's put a tingle product on their face?
A Yes.
Q Tell me about those circumstances.
A They looked a little too red.
Q Was that at a tanning salon where you saw that?
A Yes.
Q Were you there as a patron or just, what were the circumstances under which you were there?
A Customer.
Q You were a customer?
A Yes.
Q And you saw another customer with tingle on their face?
A Yes.
Q Did that customer complain or was she upset or he?
A No. She was maybe a little surprised and laughed about it.

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Q Surprised that it would turn her face red?
A Yes. She said it felt very, very strong.
Q Was she dissatisfied with the product because she wasn't expecting that reaction?
A I could care less. I didn't stay around.
Q I understand. I just didn't know if you heard her say anything like this stuff is terrible or I can't believe it did it to me?
A No.
Q Do you know where BESTPRICETANNING.COM is located?
A No.
Q Do you know the owner of BESTPRICETANNING.COM?
A No.
Q Do you know if Mr. Mercadante or Mr. Sagarin know who owns BESTPRICETANNING.COM?
A I don't know.
Q How did you find the BESTPRICETANNING.COM website?
A Yahoo shopping.

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Q I think I asked you this, do you know where they're located?
MR. STEIN: He said he doesn't know.
MR. MATTHEWS: Okay. Fair enough. I have a short memory.
MR. STEIN: Don't believe that for a second.
MR. MATTHEWS: Well, I didn't remember if I asked him that.
MR. STEIN: I don't believe you have a short memory.
Q Have you ever received any training from Australian Gold concerning the use of their tanning lotions?
A No.
MR. MATTHEWS: Let's go off the record.
(A discussion was held off the record.)
MR. MATTHEWS: This part will be subject to the highly confidential portion of the protective order for attorneys' eyes only.
(Whereupon, the following portion has been deemed highly confidential and will be bound under a separate cover.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

S&L VITAMINS, INC.,
Plaintiff/Counterclaim Defendant,

- against -

AUSTRALIAN GOLD, INC.,
Defendant/Counterclaim Plaintiff.

AUSTRALIAN GOLD, INC.,
Third-Party Plaintiff,

- against -

LARRY SAGARIN AND JOHN DOES 1-10,
Third-Party Defendants.

(Highly Confidential)

DEPOSITION OF MICHAEL NIERMAN

New York, New York

Tuesday, March 28, 2006

Reported by:
MICHELE ROSSI, RPR

Nierman - Highly Confidential 58
HIGHLY CONFIDENTIAL EXAMINATION BY MR. MATTHEWS:
Q Mr. Nierman, do you know who Danny Sheehan is?
A Yes.
Q Who is Danny Sheehan?
A He's my friend.
Q How long have you known Mr. Sheehan?
A 6 years.
Q How did you first become acquainted with Danny Sheehan?
A At the gym.
Q Was he a body builder as well?
A More so a weekend warrior.
Q You said he's your friend. Did you become personal friends after you met at the gym and --
A Yes.
Q Do you know what Mr. Sheehan does for a living?
A Yes.
Q What does he do?
A He owns tanning salons.
Q Do you know the names of the tanning salons he owns?

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A Yuca Tan.
Q Is that where you tan?
A Sometimes.
Q Where else do you tan?
A Hollywood Tan.
Q Anywhere else?
A Palm Beach Tan.
Q Anywhere else?
A No. It's been a long time.
Q Are Hollywood Tans and Palm Beach Tans chains, like a chain salon, do you know?
A Palm Beach is.
Q Who is the owner of Hollywood Tans?
A I don't know.
Q So the only friend you have that owns a tanning salon is Danny Sheehan?
A Yes.
Q Are you aware that Mr. Sheehan sells Australian Gold and Swedish Beauty tanning lotions?
A Through his tanning salons, yes.
Q Do you know what a premier salon is?
A No.
Q Are you aware if Mr. Sheehan has a

Nierman - Highly Confidential 60
contract with Australian Gold to be a premier salon with Australian Gold?
A I don't know.
Q Have you ever had any discussions with Mr. Sheehan that he's obligated to sell only Australian Gold and Swedish Beauty products?
A No.
Q Have you had any discussions with Mr. Sheehan about tanning lotions?
A No.
Q Did you introduce Steven Mercadante or Larry Sagarin to Danny Sheehan?
A No.
Q Do you know how Mr. Mercadante and Mr. Sagarin first became acquainted with Danny Sheehan?
A I think Larry knew him from high school. Steven, I do not know.
Q Were you introduced to Danny Sheehan by Larry Sagarin?
A No.
Q Did anyone else introduce you to Danny Sheehan or did you just happen to meet him at the gym?

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A I walked up to Danny and told him that I work for Larry.
Q So you knew who Danny Sheehan was prior to your introducing yourself to him?
A Yes.
Q How did you know who he was?
A When you are in a gym, you know who certain people are.
Q Does that mean Mr. Sheehan was also a pretty large guy?
A Yes.
Q So you know who the big guys are in the gym?
A Yes.
Q Did you have any involvement at all with S&L Vitamins' purchase of tanning lotions from Mr. Sheehan?
A No.
Q Were you aware that S&L Vitamins was purchasing its tanning lotions from Mr. Sheehan?
A No.
Q Larry Sagarin or Mr. Mercadante never told you that Danny Sheehan is one of our sourcings?

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A Never directly.
Q Did they ever tell you who their sources of the Australian Gold and Swedish Beauty products were?
A No.
Q Would you care?
A No.
Q What about John Tufarella, do you know who he is?
A Yes.
Q Who is John Tufarella?
A He is Danny's partner in Syosset, New York.
Q Partner at a Yuca?
A Yuca.
Q Have you met Mr. Tufarella?
A Yes.
Q How many times have you met Mr. Tufarella?
A Maybe six.
Q Is Mr. Tufarella a body builder, as well?
A No, but he's in great shape.
Q Does he work out at a gym, as well?

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A Yes.
Q Did you know that Mr. Tufarella was also supplying Australian Gold and Swedish Beauty tanning lotions to S&L Vitamins?
A No.
Q I take it that you didn't have any discussions with Mr. Tufarella about supplying any products to S&L Vitamins?
A No discussions.
Q Do you know who Plaza Sports is?
A Yes.
Q Who do you know at Plaza Sports?
A I don't know anybody there.
Q What is Plaza Sports?
A They have a pretty big chain of sports stores, I believe. There might be two or three on the island.
Q Were you aware that Plaza Sports was a supplier of S&L Vitamins for tanning lotions?
A No.
Q Do you know who Dominic Bartone is?
A Yes.
Q Who is Dominic Bartone?
A He owns Midnight Sun tanning salon, I

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believe.
Q How do you know that?
A My friend used to be partners with him many years ago or at least I think he was a partner.
Q Partner in Midnight Sun?
A Yes.
Q What was your friend's name?
A Chris Bottalato.
Q Have you ever been to Mr. Bartone's tanning salon?
A No.
Q Have you ever had any discussions with Mr. Bartone about supplying S&L Vitamins with tanning lotion?
A I've never spoke to Mr. Bartone.
Q You just know him by name only?
A Yes.
(Nonconfidential portion continues.)

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(Continuation of nonconfidential portion.)
CONTINUED EXAMINATION BY MR. MATTHEWS:
Q Has anyone ever told you about Australian Gold's distribution system, how its products are distributed to tanning salons?
A No.
Q Have you ever seen a contract between Australian Gold and any of its distributors?
A No.
Q Do you care?
A No.
Q Do you have any responsibility for the maintenance or upkeep of S&L Vitamins's website?
A No.
Q Have you ever added any products or deleted any products from the websites?
A No.
MR. STEIN: Scott, are we finished now with the confidential portion?
MR. MATTHEWS: We are, thank you. Could we go back? Just after I asked about the last entity and that question, then we just stop the designation there, because I asked a few questions that probably don't belong in

there.

Q Does S&L Vitamins have a warehouse?

A Not that I know of.

Q Other than Lindenhurst store, is there any other space it occupies?

A Not that I know of.

MR. MATTHEWS: Let's take a break.

(A recess was taken.)

MR. MATTHEWS: I have no further questions.

MR. STEIN: I've got no questions.

(Time noted: 2:50 p.m.)

A C K N O W L E D G E M E N T

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, MICHAEL NIERMAN, hereby certify, I have read the transcript of my testimony taken under oath in my deposition of March 28, 2006; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

____
MICHAEL NIERMAN

Subscribed and sworn to before me
this _____ day of ____________________, 2006.

____
NOTARY PUBLIC

C E R T I F I C A T E

STATE OF NEW YORK)
COUNTY OF NEW YORK)

I, MICHELE ROSSI, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That, MICHAEL NIERMAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness, whereof, I have hereunto set my hand this 20th day of April, 2006.

____
MICHELE ROSSI, R.P.R.

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